

REMARKS

Status of the Claims

With entry of this Preliminary Amendment claims 1-62 have been canceled without prejudice and new claims 63-147 have been added consistent with the restriction requirement mailed on December 10, 1997 in the above identified parent application and to more distinctly set forth the subject matter of the invention toward which this divisional application is directed.

The present claims encompass in whole or in part subject matter identified by the Office as representing Groups VI and VIII specified in the restriction requirement in the parent application. These Groups were characterized by the Office to embrace recombinant RSV with a "modification in a termination codon or a GS or GE signal" (Group VI), and RSV with a "nucleotide modification to a cis-acting regulatory sequence" (Group VIII), respectively, as well as dependent claims related thereto. Applicants' Preliminary Amendment presented herein consolidates this subject matter, with the exception of claim language directed to RSV having "a modification of a termination codon" which has been withdrawn without prejudice. This withdrawn subject matter is now presented in a sibling divisional application directed in part to RSV having "a modification . . . introduced within the genome or antigenome comprising a partial or complete gene deletion, a change in gene position, or one or more nucleotide change(s) that modulate expression of a selected gene" filed contemporaneously herewith.

Applicants respectfully submit that all of the claims set forth in this Preliminary Amendment should be examined, without further restriction, in a single application. In particular, the claims presented herein above bear sufficient relationship that it will not be unduly burdensome for the Office to examine all of the claims together on the merits. Coordinate review of the claims now presented will in fact facilitate the Office's review and provide for consistent examination of the subject matter presented. In this regard, Applicants note that Group VIII identified by the Office includes claims that are generically directed to

recombinant RSV having a modification of a cis-acting regulatory sequence. Group VI identified by the Office includes claims more specifically directed to RSV having a modification of a gene start (GS) or gene end (GS) signal sequence, which sequences are clearly taught in the specification and recognized in the art as examples of cis-acting regulatory sequences. Applicants have further clarified the relatedness of the newly presented claims herein by deleting reference to a "termination codon" which relates more closely to an aspect of the invention now presented in the above-referenced sibling divisional application.

Thus, the claims presented above are believed to be consistent with the Restriction Requirement in the parent application. The claims now presented for consideration are clearly related in fundamental aspects. Further restriction or species segregation of these claims would impose an undue burden on Applicants and result in a protracted, uncoordinated review process. In contrast, although certain aspects of the claims may be separate and distinct, no undue burden would be imposed on the Office to prosecute these claims together on their merits in a single application. The respective subject matter of the claims presented herein does not present "a separate subject for inventive effort, and also a separate field of search" (see, e.g., MPEP § 808.02).

#### Formal Corrections

In addition to the claims amendments presented herein, typographical amendments have been presented in the specification correcting the amino acid residue change specified by a mutation substituting C for A at nucleotide position 6313. This mutation which encodes a mutation substituting ala for glu at amino acid position 218 was incorrectly specified as a substitution of asp for glu at position 218 in Tables 37 and 38 of the specification. The amendments above correct an obvious error and are consistent with the correct designation of the noted mutation (i.e., substituting ala, not asp, for glu at position 218) provided elsewhere in the specification, e.g., at Table 39.

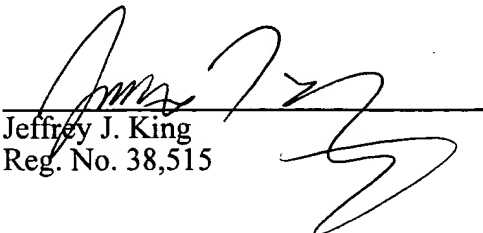
The claims presented above are all believed to be in condition for allowance. Early notice to that effect is earnestly solicited. If for any reason the Examiner feels that a

telephone conference would expedite prosecution of the subject application, the Examiner is invited to telephone the undersigned at 206/467-9600.

Respectfully submitted,

Dated: \_\_\_\_\_

3/21/00

  
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